

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	1:17-cv-02989-AT
BRAD RAFFENSPERGER, et al.,)	
)	
Defendants.)	

**RESPONSES AND OBJECTION OF NON-PARTY MILTON KIDD,
DIRECTOR OF ELECTIONS FOR THE DOUGLAS COUNTY BOARD OF
ELECTIONS AND REGISTRATION, TO THE SUBPOENA TO PRODUCE
DOCUMENTS FROM THE COALITION FOR GOOD GOVERNANCE**

COMES NOW Milton Kidd, in his official capacity as Director of Elections for the Douglas County Board of Elections and Registration (“Douglas County”), and, pursuant to Rule 45(d)(2)(B) of the Federal Rules of Civil Procedure, hereby serves these, his responses and objections to the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, dated January 8, 2021 (“Subpoena”) served by the Plaintiff Coalition for Good Governance, respectfully showing as follows:

1.

On January 8, 2021, Douglas County received the Subpoena, a copy of which is attached hereto as Exhibit A. The Subpoena purports to command production of

13 enumerated categories by 5:00 p.m. on January 22, 2021.

2.

Douglas County objects to having to comply with the Subpoena for all the requested documents by the Subpoena's specified deadline because the short compliance deadline is unduly burdensome. The Subpoena requires, among other things, a comprehensive search of an email communications server and a review of communications for responsiveness and privilege. Douglas County intends to produce the responsive, non-objectionable documents within its possession, custody, or control by Friday January 29, 2021, as set forth herein.

3.

If responsive documents exist, Douglas County intends to comply with the requests set forth in the Subpoena except as otherwise noted below.

4.

Douglas County responds to the individual Subpoena requests as follows:

Request No. 1: All reports, voter complaints, communications, incident reports, emails, text messages, and other documents regarding the problems encountered at the polling places in the November 3, 2020 election related to voter check-in, Pollpad accuracy, and voting.

Response: Douglas County objects to this request on the grounds that it is references to “complaints” and “problems” with “voting” are so vague as to preclude it from reasonably ascertaining the information sought by the request. Douglas County further objects that the request contains an assumption that there were, in fact, “problems encountered at the polling places.” Without waiving and subject to said objections and based on Douglas County’s good faith belief as to the information sought by the request, Douglas County states it is unaware of any complaints by voters about check-in procedures or poll pad accuracy for the November 3, 2020 election. Thus, Douglas County is not aware of any documents within its possession, custody, or control that are responsive to this request.

Request No. 2: Documents reflecting voter complaints relating to inaccuracy of the BMD printed ballots and all documents accounting for spoiled ballots for elections conducted after October 1, 2020.

Response: Douglas County objects to this request on the grounds that it is references to “complaints” and “inaccuracy” with “BMD printed ballots” are so vague as to preclude it from reasonably ascertaining the information sought by the request. Douglas County further objects that the request contains an assumption that there was, in fact, “inaccuracy [sic] of the BMD printed ballots.” Without waiving and subject to said objections and based on Douglas County’s good faith belief as to

the information sought by the request, Douglas County states it is unaware of any complaints by voters about check-in procedures or poll pad accuracy for elections conducted after October 1, 2020. Thus, Douglas County is not aware of any documents within its possession, custody, or control that are responsive to this request. In further response, however, Douglas County will produce its spreadsheet of spoiled ballots for elections conducted in the specified time frame.

Request No. 3: All communications with Georgia Secretary of State after September 15, 2020 concerning errors, malfunctions, scanning problems, user errors, security concerns, ballot secrecy issues, or other operational problems related to the Dominion Voting System, including the Knowlnk PollPad system.

Response: Douglas County will produce those documents of which it has knowledge and are within its possession, custody, or control that it reasonably believes are encompassed by the request.

Request No. 4: Electronic copies of all scanned ballot images appended with the Auditmark record showing the interpretation of each vote where applicable, for the January 5, 2021 election, and for both the election day count and the machine recount of the November 3, 2020 election.

Response: Douglas County objects to this request on the ground that it seeks confidential documents that are not subject to disclosure and which are maintained

under seal. The disclosure of ballot images violates the voting protections afforded by the Georgia Constitution which provides for casting votes via secret ballot. *See* Ga. Const. Art. II, Sec. I, Para. I. Additionally, under O.C.G.A. § 21-2-500(a), votes must remain under seal for a period of 24 months, subject to release only upon order of a superior court. Plaintiff did not provide an order of a superior court releasing responsive documents, and Douglas County thus objects to their production.

Request No. 5: An electronic copy of all Cast Vote Records from the Dominion "EMS Results Tally and Reporting" system, from both the original count and machine recount of the November 3, 2020 election and for the January 5, 2021 runoff.

Response: Douglas County is not aware of any document named “Cast Vote Records” from the Dominion system, and thus is not aware of any documents within its possession, custody, or control that are responsive to this request.

Request No. 6: The batch sheets or cover sheets of all batches of ballots for which the election day vote count of that batch differs from the hand audit vote count in the 2020 Presidential Election race.

Response: Douglas County is not in possession, custody, or control of responsive documents related to election day vote counts because there were no batch sheets used for the initial count of votes for the November 3, 2020 election.

Further responding, Douglas County will produce documents reflecting its total vote tallies from election day and from the hand recount.

Request No. 7: High quality scans of at least 300 dpi for all ballots in the batches identified above in item (6).

Response: Douglas County incorporates by reference its response to Request No. 6 as if fully set forth herein.

Request No. 8: All documents related to attempts to reconcile the presidential contest tallies between the original certified election day count and the audit hand count for the November 3, 2020 election.

Response: Douglas County objects to this request on the ground that its reference to “attempts to reconcile the presidential contest tallies” is so vague as to preclude it from reasonably ascertaining the information sought by the request. Douglas County further objects that the request contains an assumption that Douglas County made “attempts to reconcile the presidential contest tallies” between election day and the audit hand recount. Without waiving and subject to said objections and based on Douglas County’s good faith belief as to the information sought by the request, Douglas County states that it is unaware of any documents reflecting attempts to reconcile the presidential contest tallies. Thus, Douglas County is not aware of any document—other than the publicly available tallies of the original

count of ballots for the November 3, 2020 election and the hand recount—that are within its possession, custody, or control that are responsive to this request. Further responding, Douglas County will produce documents reflecting its total vote tallies from election day and from the hand recount.

Request No. 9: All documents related to attempts to reconcile the presidential contest tallies between the original certified election day count and machine recount for the November 3, 2020 election.

Response: Douglas County objects to this request on the ground that its reference to “attempts to reconcile the presidential contest tallies” is so vague as to preclude it from reasonably ascertaining the information sought by the request. Douglas County further objects that the request contains an assumption that Douglas County made “attempts to reconcile the presidential contest tallies” between election day and the machine recount. Without waiving and subject to said objections and based on Douglas County’s good faith belief as to the information sought by the request, Douglas County states it is unaware of any documents reflecting attempts to reconcile the presidential contest tallies. Thus, Douglas County is not aware of any documents—other than the publicly available tallies of the original count of ballots for the November 3, 2020 election and the machine recount—that are within its possession, custody, or control that are responsive to this request. Further

responding, Douglas County will produce documents reflecting its total vote tallies from election day and from the machine recount.

Request No. 10: The Election Summary Report (or similar summary of vote tallies) for all contests (not limited to the presidential contest) tabulated by the Dominion system from the machine recount for the November 3, 2020 election.

Response: Douglas County will produce those documents of which it has knowledge and are within its possession, custody, or control that it reasonably believes are encompassed by the request.

Request No. 11: For all elections from June 9, 2020 through January 5, 2021, all documents related to Dominion EMS batch management issues or other processing problems experienced by Douglas County in fully processing and tallying all uploaded batches of ballot images. Such documents should include, but are not limited to, communications with any persons about the batch management issues.

Response: Douglas County objects to this request on the grounds that its references to “batch management issues” or “other processing problems” are so vague as to preclude it from reasonably ascertaining the information sought by the request. Douglas County further objects that the request contains an assumption that

there were, in fact, “batch management issues” or “other processing problems.” Without waiving and subject to said objections and based on Douglas County’s good faith belief as to the information sought by the request, Douglas County states it is unaware of any such issues for elections conducted between June 9, 2020 and January 5, 2021. Thus, Douglas County is not aware of any documents within its possession, custody, or control that are responsive to this request.

Request No. 12: Electronic copies of all Adjudication Reports for all batches of ballots from the original official count and the machine recount of the November 3, 2020 election. Reports should include the "Activity Log Report," "Write-in Resolution Report," "Statistics Report," and "Quarantined Ballots Report" in either the Excel or CSV format.

Response: Douglas County will produce those documents of which it has knowledge and are within its possession, custody, or control that it reasonably believes are encompassed by the request.

Request No. 13: Ballot images for all ballots (BMD and hand marked) in the January 5, 2021 election that do not list two U.S. Senate races and one Public Service Commission race.

Response: Douglas County objects to this request on the ground that it seeks confidential documents that are not subject to disclosure and which are maintained

under seal. The disclosure of ballot images violates the voting protections afforded by the Georgia Constitution which provides for casting votes via secret ballot. *See* Ga. Const. Art. II, Sec. I, Para. I. Additionally, under O.C.G.A. § 21-2-500(a), votes must remain under seal for a period of 24 months, subject to release only upon order of a superior court. Plaintiff did not provide an order of a superior court releasing responsive documents, and Douglas County thus objects to their production.

Respectfully submitted this 22nd day of January, 2021.

FREEMAN MATHIS & GARY, LLP

s/ David A. Cole

David A. Cole

Georgia Bar No. 142383

Timothy M. Boughey

Georgia Bar No. 832112

100 Galleria Parkway, Suite 1600

Atlanta, Georgia 30339

T: (770) 818-0000

F: (770) 937-9960

E: dcole@fmglaw.com

E: tboughey@fmglaw.com

*Attorneys for Milton Kidd, in his official capacity as
Director of Elections for the Douglas County Board
of Elections and Registration*